**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

H. THAYNE DAVIS,	:	
Plaintiff,	:	Case No: 3:04cv00059
v.	:	District Judge Walter Herbert Rice Magistrate Judge Sharon L. Ovington
LIFETIME CAPITAL, INC., et al.,	:	
Defendants.	:	

ORDER

This case is before the Court upon a document filed by two investors in Lifetime Capital Inc., Ernest Storms and Jacquelyn Storms (Investors). (Doc. #1226). The Investors appear pro se. Their document is written as a letter in regard to "Lifetime Capital 3:04 CV 0059: **Request to consolidate the pending Appeal and wa[i]ve the appeal fee.**" (Doc. #1226)(emphasis in original). Attached to the document is a certificate stating that the Investors served attorney Joseph C. Oehlers, Esq. (one of the receiver's attorneys of record).

The Investors ask this Court to consolidate their appeals – presumably with the appeals brought by other Jordan investors – which are pending in the United States Court of Appeals for the Sixth Circuit. This Court, however, does not have the authority to consolidate (or not) cases presently pending in the Court of Appeals. The Investors must seek consolidation in the Court of Appeals. *See* Fed. R. App. P. 3(b); *see also Northeast Ohio Coalition for Homeless and Service Employees v. Blackwell*, 467 F.3d 999, 1005 (6th Cir. 2006).

The Investors also indicate, "The fee of $455 is tendered in order to protect our appeal and if the appeal is consolidated we request a refund of the appeal fee tendered." (Doc. #1226). Construing the Investors' request liberally in their favor, it appears that they seek leave to proceed *in forma pauperis* on appeal. Yet, they have not submitted any information regarding their current financial status.. Under these circumstances, they have not shown that they are eligible to proceed *in forma pauperis* on appeal. *See* 28 U.S.C. §1915. And, contrary to their explanation, they have not yet tendered the $455 filing fee. The Investors remain free either to pay the full filing fee in this District Court or to apply in the United States Court of Appeals for the Sixth Circuit for leave to appeal *in forma pauperis*. *See* Fed. R. App. P. 3(b).

Accordingly, the Investors' request to consolidate the pending appeal and waive the appeal fee (Doc. #1226) (emphasis omitted) is denied without prejudice to renewal.

January 20, 2012

s/Sharon L. Ovington
Sharon L. Ovington
United States Magistrate Judge